

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**File No. RH03032090
June 7, 2004**

NOTICE OF PROPOSED RULEMAKING

**SUBJECT: ORGANIZED AUTOMOBILE INSURANCE FRAUD GRANT
FUNDING PROGRAM**

PROPOSED REGULATORY ACTION

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Article 5, sections 2698.70 and 2698.71 of Subchapter 9, Chapter 5, of Title 10 of the California Code of Regulations (CCR), regarding the program for the investigation and prosecution of organized automobile insurance fraud.

PUBLIC HEARING

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held:

Location: 300 Capitol Mall, 13th Floor Conference Room
Sacramento, CA 95814
Date: July 26, 2004.
Time: 10:00 A.M.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt, amend and repeal specified portions of the subject regulations under the authority of Insurance Code (CIC) sections 12921, 12926. The Commissioner's decision on the proposed changes to the regulations will implement, interpret and make specific provisions of Insurance Code section 1874.8 and 1874.81.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on July 26, 2004. Please direct all written comments to the following contact person:

Wesley E. Kennedy
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3561

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Gene Woo
45 Fremont Street, 24th Floor
San Francisco, CA 94105
(415) 538-4496

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on July 26, 2004. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: kennedyw@insurnace.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Wesley E. Kennedy and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

PUBLIC DISCUSSION OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the CDI mailed an invitation to Pre-notice Public Workshop to a number of insurer-group representatives and also posted such notice on its public web-site. Subsequently, the CDI held a public discussion in order to receive comments about the proposed regulation. Input from the workshop participants was taken into account in the formulation of the proposed regulation.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable

advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of CCR, title 10, Chapter 5, Subchapter 4.5, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814 (916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commissioner proposes to amend sections 2698.70 and 2698.71 of title 10, of the CCR regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the CIC sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8, requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney's Offices.

The existing regulations provide for a method of calculation and payment of this assessment in the same manner as that used for the similar but distinct assessment under CIC section 1872.8 (10 CCR 2698.61 and 2698.62). The existing regulation permits the calculation and payment of the assessment to be prorated on a quarterly basis and do require a specific method of identifying the vehicles subject to assessment is required. The proposed amendments will implement, interpret and make specific the provisions of CIC sections 1874.8 and 1874.81 and title 10, CCR sections 2698.70 and 2698.71. The proposed action would specify and make more clear and uniform the process the calculation, payment and verification of the annual assessment by providing conforming the provisions of title 10 CCR 2698.70 and 2698.71 with those of title 10 CCR 2698.61 and 2698.62, which are being amended concurrently herewith (RH 03032089).

The specific regulations being amended by this notice are as follows:

Section 2698.70 Definitions

Adds a definition for the terms “in force” and “vehicle identification number” and makes appropriate adjustment to the existing definitions for the insertion of the added provisions.

Section 2698.71 Annual Fee

This notice would amend the existing text of this section to delete the entire section except the amount of assessment and otherwise conform the process for the calculation and payments of the assessment by providing an express cross reference in this section to the provisions of a similar assessment under title 10 CCR 2698.62.

MATERIAL INCORPORATED BY REFERENCE

No material has been incorporated by reference in the proposed regulations.

DETERMINATIONS

BUSINESS REPORTS

To the extent that any provision of the proposed regulations could be interpreted as requiring a report of business, the Commissioner finds that the application of these regulations to business necessary in the public health, safety, or welfare of the people of the state.

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses. This section pertains to the methodology for the calculation and payment of an assessment by insurance companies (Govt. Code 11342.610(b)(2).)

IMPACT ON BUSINESSES AND JOBS

The Commissioner of the CDI has made an initial determination that the regulations would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with the businesses on other states.

The Commissioner has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have significant cost impact on private persons or businesses directly affected. The cost imposed on the businesses directly affected, insurers, is one-dollar (\$1.00) per policy per year and costs associated with the calculation and transmittal of this assessment.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Commissioner has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a) (13), the CDI must determine that no reasonable alternative considered by the CDI or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affect private persons than the emergency action. These regulations are to implement, interpret and make specific a statutorily prescribed program. The Commissioner has not identified any equally or less burdensome alternative to these regulations, at this time. The public is invited to submit such alternatives during the public comment period.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will not be accepted. Comments should be sent to the agency contact person:

Department of Insurance
Attn: Wesley E. Kennedy
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

All interested persons may present oral/or written testimony at the scheduled public hearing.

ACCESS TO PROPOSED REGULATIONS; STATEMENT OF REASONS AND RULEMAKING FILE

The CDI has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. On request, the initial statement of reasons, including the text of the regulations and any supplemental information contained in the rulemaking file will be made available to the public. The final statement of reasons will be made available once it has been prepared and will also be available on the CDI website.

The rulemaking file will be made available for inspection, by appointment, at 300 Capitol Mall, 17th Floor, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests for copies of the text of the regulation, initial statement of reasons, final statement of reasons, review of the rulemaking file or questions regarding these proceedings should be directed to the contact person listed above.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov/docs/index.html>. Near the right side of the page under "Quick Links" go to the bottom of the list and click on "Legal Information." On the next page, click on "Proposed Regulations" In this section, scroll down until you see the subheading "Search." Enter RH03032090 (the CDI's regulation file number for these regulations) in the "Search for" field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "1874.8"), or search by key words ("assessment " for example). Then, click on the "Submit" button to display links to the various filing documents."

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "organized automobile fraud assessment" link, and click it. Links to the documents associated with these regulations will then be displayed.

AUTOMATIC MAILING

A copy of this notice, including the Informative Digest, containing the substance of the proposed regulations will automatically be sent all persons on the Insurance Commissioner's mailing list.

ADOPTION OF REGULATION

Following the close of the comment period and any hearing, the Insurance Commission may adopt the regulation substantially as described in this notice and informative digest. Copies of the regulations, as adopted, will be sent to all persons on the Commissioner's interested parties mailing list and to all person who provided comment during the comment period or at any public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

As a result of public comment (oral or written) the Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on

which the agency adopts, amends or repeals the resulting regulations. At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above. If adopted these regulations will appear in Title 10, Chapter 5, Subchapter 9, Article 5, Sections 2698.70 and 2698.71, California Code of Regulations